

Notice of Allowability

Application No.

10/086,807

Examiner

Julian Mercado

Applicant(s)

CHRISTIAN ET AL.

Art Unit

1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12-19-05.
2. ☒ The allowed claim(s) is/are 1-10, 12-21, 29-40 and 66-74.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

DETAILED ACTION

Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Jeffie Kopczynski on January 18, 2006.

The application has been amended as follows:

1. In claim 1 at line 4, "mixture; and" has been changed to --mixture;--
2. In claim 1 after line 4, --humidifying ozone to form humidified ozone; and-- has been inserted as a new line.
3. In claim 1 at line 5, "humidified ozone" has been changed to --the humidified ozone--.
4. In claim 7 at line 2, "humidified ozone" has been changed to --the humidified ozone--.
5. In claim 8 at line 2, "humidified ozone" has been changed to --the humidified ozone--.
6. In claim 9 at line 2, "humidified ozone" has been changed to --the humidified ozone--.

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7. In claim 16 at line 2, "humidified ozone" has been changed to --the humidified ozone--.

8. In claim 29 after line 4, --humidifying ozone to form humidified ozone;-- has been inserted as a new line.

9. In claim 29 at line 5, "humidified ozone" has been changed to --the humidified ozone--.

10. In claim 30 after line 4, --humidifying ozone to form humidified ozone; and-- has been inserted as a new line.

11. In claim 30 at line 5, "humidified ozone" has been changed to --the humidified ozone--.

12. In claim 71 at line 2, "humidified ozone" has been changed to --the humidified ozone--.

Remarks

Claims 1-10, 12-21, 29-40 and 66-74 are pending. This Office action is responsive to applicant's remarks filed December 19, 2005.

Claim Rejections - 35 USC § 102 and 103

The rejection of claims 1-6, 8-10, 13, 14, 16, 29, 30, 32-40, 66-70 and 72-74 under 35 U.S.C. 102(b) based on Megahed et al. (U.S. Pat. 3,911,094) in view of Maruta (JP 10-284075) has been obviated.

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The rejection of claims 7, 17 and 71 under 35 U.S.C. 103(a) based on Megahed et al., Maruta and Jackovitz et al. (U.S. Pat. 4,481, 128) has been obviated.

The rejection of claim 12 under 35 U.S.C. 103(a) based on Megahed et al., Maruta and Köhler (U.S. Pat. 5,800,947) has been obviated.

The rejection of claims 15, 18 and 19 under 35 U.S.C. 103(a) based on Megahed et al., Maruta and Kodama et al. (JP 2001-202956) has been obviated.

The rejection of claims 20, 21 and 31 under 35 U.S.C. 103(a) based on Megahed et al., Maruta and Ikoma et al. (U.S. Pat. 5,700,596) has been obviated.

The above rejections have been withdrawn.

The claims recite, *inter alia*, the limitation “contacting the dry mixture with *humidified* ozone to form a nickel oxyhydroxide.” (emphasis added) As to Megahed et al. (the primary reference) teaching *dry* ozone, it is noted that “dry ozone”, even as used by the patentees themselves in e.g. col. 2 line 26-29, allows for an interpretation of a relative term or term of degree, especially in view of the present claims being silent on the level or range of humidity in humidified ozone. However, even in giving the term “dry ozone” its broadest reasonable interpretation of, e.g. being dry only as much as laboratory conditions during its formation will allow (such as in Megahed et al.’s use of a Welsbach ozonator, see col. 4 line 34-42) and assuming *arguendo* that ambient humidity has a non-zero presence in the formed dry ozone, the present examiner’s amendment which now recites the step of --humidifying ozone to form humidified ozone-- obviates a forthcoming rejection based on Megahed et al. and Maruta. The positively recited humidifying step obviates any passive non-zero level of humidification of the dry ozone used in Megahed et al.

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The examiner also concedes with applicant's assertions that in modifying Megahed et al. with the teachings of Maruta (the secondary reference, and to the extent that ozone gas passed through a dispersion results in humidified ozone), the teachings of Maruta would result in contacting a wet mixture, e.g. a dispersion with ozone, while the claims recite a dry mixture.

Allowable Subject Matter

Claims 1-10, 12-21, 29-40 and 66-74 are allowed.

Conclusion

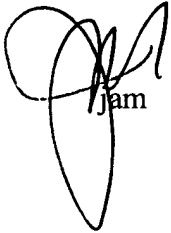
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian Mercado whose telephone number is (571) 272-1289. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to be "J. Jam", with a large loop on the left side.A handwritten signature in black ink, appearing to be "Patrick Joseph Ryan", with a large loop on the left side.

PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER